

CHAPTER 686B

ASBESTOS AND SILICA CLAIMS PRIORITIES

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686B.1 Title.

[This chapter](#) shall be known and may be cited as the “*Asbestos and Silica Claims Priorities Act*”.

[2017 Acts, ch 11, §10](#)

NEW section

686B.2 Definitions.

As used in [this chapter](#), unless the context otherwise requires:

1. “AMA guides” means the American medical association’s guides to the evaluation of permanent impairment in effect at the time of the performance of any examination or test on the exposed person required under [this chapter](#).

2. “Asbestos” means the same as defined in [section 686A.2](#).

3. “Asbestos action” means the same as defined in [section 686A.2](#).

4. “Asbestosis” means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

5. “Board-certified in internal medicine” means certified by the American board of internal medicine or the American osteopathic board of internal medicine at the time of the performance of an examination and rendition of a report required by [this chapter](#).

6. “Board-certified in occupational medicine” means certified in the specialty of occupational medicine by the American board of preventive medicine or the specialty of occupational/environmental medicine by the American osteopathic board of preventive medicine at the time of the performance of an examination and rendition of a report required by [this chapter](#).

7. “Board-certified in pathology” means holding primary certification in anatomic pathology or clinical pathology from the American board of pathology or the American osteopathic board of pathology at the time of the performance of an examination and rendition of a report required by [this chapter](#), and practicing principally in the field of pathology including regular evaluation of pathology materials obtained from surgical or postmortem specimens.

8. “Board-certified in pulmonary medicine” means certified in the specialty of pulmonary medicine by the American board of internal medicine or the American osteopathic board of internal medicine at the time of the performance of an examination and rendition of a report required by [this chapter](#).

9. “Certified B-reader” means an individual who has qualified as a national institute for occupational safety and health final or B-reader of X rays under [42 C.F.R. §37.51\(b\)](#), whose certification was current at the time of any readings required under [this chapter](#), and whose B-reads comply with the national institute for occupational safety and health B-reader’s code of ethics, issues in classification of chest radiographs, and classification of chest radiographs in contested proceedings.

10. “Exposed person” means a person whose exposure to asbestos or silica or to asbestos-containing products or silica-containing products is the basis for an asbestos action or silica action.

11. “FEV1” means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during the performance of simple spirometric tests.

12. “FEV1/FVC” means the ratio between the actual values for FEV1 over FVC.

13. “FVC” means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

14. “ILO system” and “ILO scale” mean the radiological ratings and system for the classification of chest X rays of the international labour office provided in guidelines for the use of ILO international classification of radiographs of pneumoconioses in effect on the day any X rays of the exposed person were reviewed by a certified B-reader.

15. “Nonmalignant condition” means any condition that can be caused by asbestos or silica other than a diagnosed cancer.

16. “Official statements of the American thoracic society” means lung function testing standards set forth in statements from the American thoracic society, including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung, and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person.

17. “Pathological evidence of asbestosis” means a statement by a physician who is board-certified in pathology that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies graded 1 (B) or higher under the criteria published in asbestos-associated diseases, 106 Archive of Pathology and Laboratory Medicine 11, appendix 3 (October 8, 1982), or grade one or higher in pathology of asbestosis, 134 Archive of Pathology and Laboratory Medicine 462-80 (March 2010) (tables 2 and 3), as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis.

18. “Pathological evidence of silicosis” means a statement by a physician who is board-certified in pathology that more than one representative section of lung tissue uninvolved with any other disease process demonstrates complicated silicosis with characteristic confluent silicotic nodules or lesions equal to or greater than one centimeter and birefringent crystals or other demonstration of crystal structures consistent with silica, well-organized concentric whorls of collagen surrounded by inflammatory cells, in the lung parenchyma and no other more likely explanation for the presence of the fibrosis exists, or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

19. “Plaintiff” means the person bringing an asbestos action or silica action, including a personal representative if the asbestos action or silica action is brought by an estate, or a conservator or next friend if the asbestos action or silica action is brought on behalf of a minor or legally incapacitated individual.

20. “Predicted lower limit of normal” means the test value that is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height, and gender, according to the recommendations by the American thoracic society and as referenced in the applicable AMA guides, primarily national health and nutrition examination survey predicted values, or as amended.

21. “Pulmonary function test” means spirometry, lung volume testing, and diffusion capacity testing, including appropriate measurements, quality control data, and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA guides and all standards provided in the official statements of the American thoracic society in effect on the day pulmonary function testing of the exposed person was conducted.

22. “Qualified physician” means a physician who is board-certified in internal medicine, board-certified in pathology, board-certified in pulmonary medicine, or board-certified in occupational medicine, as may be appropriate to the actual diagnostic specialty in question, and for whom all of the following are true:

a. The physician conducted a physical examination of the exposed person and has taken a detailed occupational, exposure, medical, smoking, and social history from the exposed person, or if the exposed person is deceased, has reviewed the pathology material and has taken a detailed history from the person most knowledgeable about the information forming the basis of the asbestos action or silica action.

b. The physician treated or is treating the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination, or in the case of a physician who is board-certified in pathology, examined tissue samples or pathological slides of the exposed person at the request of the treating physician.

c. The physician spends no more than twenty-five percent of the physician's professional practice time providing consulting or expert services in actual or potential civil actions, and whose medical group, professional corporation, clinic, or other affiliated group earns not more than twenty-five percent of its revenue providing such services.

d. The physician was licensed to practice on the date any examination or pulmonary function testing was conducted, and actively practices or practiced in the state where the exposed person resides or resided at the time of the examination or pulmonary function testing, or the state where the asbestos action or silica action was filed.

e. The physician received or is receiving payment for the treatment of the exposed person from the exposed person, a member of the exposed person's family, or the exposed person's health care plan and not from the exposed person's attorney.

f. The physician prepared or directly supervised the preparation and final review of any medical report under [this chapter](#).

g. The physician has not relied on any examinations, tests, radiographs, reports, or opinions of any physician, clinic, laboratory, or testing company that performed an examination, test, radiograph, or screening of the exposed person in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or that was conducted without establishing a physician-patient relationship with the exposed person or medical personnel involved in the examination, test, or screening process, or that required the exposed person to agree to retain the service of an attorney.

23. "*Radiological evidence of asbestosis*" means a quality 1 chest X ray under the ILO system, or a quality 2 chest X ray in a death case when no pathology or quality 1 chest X ray is available, showing bilateral small, irregular opacities (s, t, or u) occurring primarily in the lower lung zones graded by a certified B-reader as at least 1/1 on the ILO scale.

24. "*Radiological evidence of diffuse bilateral pleural thickening*" means a quality 1 chest X ray under the ILO system, or a quality 2 chest X ray in a death case when no pathology or quality 1 chest X ray is available, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one costophrenic angle as classified by a certified B-reader.

25. "*Radiological evidence of silicosis*" means a quality 1 chest X ray under the ILO system, or a quality 2 chest X ray in a death case when no pathology or quality 1 chest X ray is available, showing bilateral predominantly nodular or rounded opacities (p, q, or r) occurring primarily in the upper lung fields graded by a certified B-reader as at least 1/1 on the ILO scale or A, B, or C sized opacities representing complicated silicosis or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

26. "*Silica*" means a respirable crystalline form of silicon dioxide, including quartz, cristobalite, and tridymite.

27. "*Silica action*" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on, or related to the health effects of exposure to silica, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance, and any other derivative claim made by or on behalf of a person exposed to silica or a representative, spouse, parent, child, or other relative of that person.

28. "*Silicosis*" means simple silicosis, acute silicosis, accelerated silicosis, or chronic silicosis caused by the inhalation of respirable silica.

29. "*Supporting test results*" means copies of the B-reading; pulmonary function tests, including printouts of the flow volume loops, volume time curves, diffusing capacity of the lung for carbon monoxide graphs, lung volume tests and graphs, quality control data and other pertinent data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards set forth in [this chapter](#);

B-reader reports; reports of X ray examinations; diagnostic imaging of the chest; pathology reports; and all other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician's conclusions.

[2017 Acts, ch 11, §11](#)

NEW section

686B.3 Filing claims — establishment of prima facie case — individual actions to be filed.

1. A plaintiff in an asbestos action involving a nonmalignant condition or a silica action involving silicosis shall file with the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed under oath by a qualified physician and accompanied by supporting test results, which constitute prima facie evidence that the exposed person meets the requirements of [this chapter](#). The report shall not be prepared by an attorney or person working for or on behalf of an attorney.

2. A plaintiff shall include with the detailed narrative medical report a sworn information form containing all of the following:

a. The name, address, date of birth, social security number, marital status, occupation, and employer of the exposed person, and any person through whom the exposed person alleges exposure.

b. The plaintiff's relationship to the exposed person or person through whom the exposure is alleged.

c. The specific location and manner of each alleged exposure, including the specific location and manner of exposure for any person through whom the exposed person alleges exposure.

d. The beginning and ending dates of each alleged exposure.

e. The identity of the manufacturer of the specific asbestos or silica product for each exposure.

f. The identity of the defendant or defendants against whom the plaintiff asserts a claim.

g. The specific asbestos-related or silica-related disease claimed to exist.

h. Any supporting documentation relating to the information required under this subsection.

3. For an asbestos action or silica action pending as of July 1, 2017, the detailed narrative medical report and supporting test results and sworn information form described in [subsections 1 and 2](#) shall be provided to all parties not later than ninety days after July 1, 2017, or not later than ninety days before trial, whichever is earlier.

4. A defendant shall be afforded a reasonable opportunity to challenge the adequacy of the prima facie evidence before trial.

5. The court shall dismiss the asbestos action or silica action without prejudice on finding that the plaintiff has failed to make the prima facie showing required by [this chapter](#) or failed to comply with the requirements of [this section](#).

6. An asbestos action or silica action must be individually filed and shall not be filed on behalf of a group or class of plaintiffs.

[2017 Acts, ch 11, §12](#)

NEW section

686B.4 Asbestos claims involving nonmalignant conditions — elements of proof.

An asbestos action involving a nonmalignant condition shall not be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which asbestos exposure was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

1. Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse bilateral pleural thickening.

2. A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form

the basis of the action, including identification of all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease-causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure.

3. A detailed medical, social, and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and the most probable cause of such medical problems.

4. Evidence verifying that at least fifteen years have elapsed between the exposed person's date of first exposure to asbestos and the date of diagnosis.

5. Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides or reported significant changes year to year in lung function for FVC, FEV1, or diffusing capacity of the lung for carbon monoxide as defined by the American thoracic society's interpretative strategies for lung function tests, 26 European Respiratory Journal 948-68, 961-62, table 12 (2005), as updated.

6. Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed person's physical impairment, based on a determination that the exposed person has any of the following:

a. FVC below the predicted lower limit of normal and FEV1/FVC ratio, using actual values, at or above the predicted lower limit of normal.

b. Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

c. A chest X ray showing bilateral small, irregular opacities (s, t, or u) graded by a certified B-reader as at least 2/1 on the ILO scale.

7. The qualified physician signing the detailed narrative medical report has concluded that exposure to asbestos was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or similar opinion, does not satisfy the requirements of this subsection.

[2017 Acts, ch 11, §13](#)

NEW section

686B.5 Silica claims involving silicosis — elements of proof.

A silica action involving silicosis shall not be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which exposure to silica was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

1. Radiological or pathological evidence of silicosis or a high-resolution computed tomography scan showing evidence of silicosis.

2. A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including silica or other disease-causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure.

3. A detailed medical, social, and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and the most probable cause of such medical problems.

4. Evidence that a sufficient latency period has elapsed between the exposed person's date of first exposure to silica and the day of diagnosis.

5. Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides or reported significant changes year to year in lung function for FVC, FEV1, or diffusing capacity of the lung for carbon monoxide as defined by the American thoracic society's interpretative strategies for lung function tests, 26 European Respiratory Journal 948-68, 961-62, table 12 (2005), as updated.

6. The qualified physician signing the detailed narrative medical report has concluded that exposure to silica was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion stating that the medical findings and impairment are consistent with or compatible with exposure to silica, or similar opinion, does not satisfy the requirements of this subsection.

[2017 Acts, ch 11, §14](#)

NEW section

686B.6 Evidence of physical impairment.

Evidence relating to physical impairment, including pulmonary function testing and diffusing studies, offered in an action governed by [this chapter](#), must satisfy all of the following requirements:

1. The evidence must comply with the quality controls, equipment requirements, methods of calibration, and techniques set forth in the AMA guides and all standards set forth in the official statements of the American thoracic society which are in effect on the date of any examination or pulmonary function testing of the exposed person required by [this chapter](#).

2. The evidence must not be obtained by or based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or of this state.

3. The evidence must not be obtained under the condition that the plaintiff or exposed person retains the legal services of the attorney sponsoring the examination, test, or screening.

[2017 Acts, ch 11, §15](#)

NEW section

686B.7 Procedures — limitation.

1. Evidence relating to the prima facie showings required under [this chapter](#) shall not create any presumption that the exposed person has an asbestos-related or silica-related injury or impairment, and shall not be conclusive as to the liability of any defendant.

2. No evidence shall be offered at trial, and the jury shall not be informed, of any of the following:

a. The grant or denial of a motion to dismiss an asbestos action or silica action under the provisions of [this chapter](#).

b. The provisions of [this chapter](#) with respect to what constitutes a prima facie showing of asbestos-related impairment or silica-related impairment.

3. Until a court enters an order determining that the exposed person has established prima facie evidence of impairment, an asbestos action or silica action shall not be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the trial court upon motion of one of the parties and for good cause shown.

4. a. A court may consolidate for trial any number and type of asbestos actions or silica actions with the consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos actions or silica actions relating to the exposed person and members of that person's household.

b. This subsection does not preclude the consolidation of cases by court order for pretrial or discovery purposes.

5. A defendant in an asbestos action or silica action shall not be liable for exposures from a product or component part made or sold by a third party.

[2017 Acts, ch 11, §16](#)

NEW section

686B.8 Statute of limitations — two-disease rule.

1. With respect to an asbestos action or silica action not barred by limitations as of July 1, 2017, an exposed person's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earliest of the following:

a. The exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment.

b. The exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment.

c. The date of death of the exposed person having an asbestos-related impairment or silica-related impairment.

2. [This section](#) shall not be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as of July 1, 2017.

3. An asbestos action or silica action arising out of a nonmalignant condition shall be a distinct cause of action from an action for an asbestos-related cancer or silica-related cancer. Where otherwise permitted under state law, no damages shall be awarded for fear or increased risk of future disease in an asbestos action or silica action.

[2017 Acts, ch 11, §17](#)

NEW section

686B.9 Application.

1. [This chapter](#) applies to all asbestos actions and silica actions filed on or after July 1, 2017.

2. [This chapter](#) applies to all pending asbestos actions and silica actions in which trial has not commenced as of July 1, 2017, unless the court finds that the application of a provision in [this chapter](#) would unconstitutionally affect a vested right. In that case, the provision does not apply and the court shall apply prior law.

[2017 Acts, ch 11, §18](#)

NEW section